

June 18, 2004

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Section 2051-3

VERIFICATION CRITERIA

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, section 2051-3, to conform to the list of documents in federal regulations used to verify an individual's true identity and legal right to work.

The Department will adopt these amendments after considering all comments, objections, or recommendations regarding the proposed action.

Informative Digest/Policy Statement Overview:

The Workforce Investment Act (WIA) requires the Department's Job Service (JS) activities to be coordinated and delivered, in partnership with the programs funded under WIA, through the One-Stop Career Center (OSCC) system. The Department's JS staff and WIA funded partner staff are co-located in OSCCs throughout the State. Federal law and regulation require WIA funded partners to determine an individual's right to work as a condition of eligibility for program services. Likewise, State law requires the Department's JS to verify an individual's legal status and right to work before employment services can be provided. The WIA partners rely on Immigration and Naturalization (INS) direction for acceptable documentation while State law and regulation outline the documents acceptable for the Department's JS verification. The lists of acceptable documentation under both programs are, with minor exceptions, similar.

The INS has revised the list of valid employment eligibility and identification verification documents. The INS issued changes to INS Form I-9, Employment Eligibility Verification Form, that either eliminated or clarified the use of INS forms as acceptable identity and work authorization documents. With these changes, California regulations permit documents to be accepted that are no longer considered valid proof of right to work by the INS.

The INS changes to Form I-9 were effective September 30, 1997, by interim rule published at 62 Fed.Reg. 51001-51006 removing four documents from the list of acceptable documents. The change also clarified a subsequent interim rule of February 9, 1999, explaining when receipts may be used in lieu of original documents in two situations when INS Form I-94 is used.

Based on the INS changes, the Department's Workforce Investment Division issued

Information Bulletin Number WIAB01-41 on October 30, 2001, transmitting these changes to One-Stop Career Center partners to establish eligibility for WIA Title I-B services.

The list of employment eligibility and identity verification forms used by the JS is based on California legislation in CCR, title 22, section 2051-3. Since section 2051-3 has not been amended to reflect the INS changes, the JS is using an obsolete list of documents and a different list than used by WIA One-Stop Career Center staff. As a result, a customer may be found eligible or not eligible for program services based on which program staff, JS or WIA, does the initial assessment of eligibility. Section 2051-3 needs to be amended to conform to federal law and eliminate and clarify for Department staff which INS forms are acceptable.

If there is no amendment to CCR, title 22, section 2051-3, some One-Stop customers may be provided service when not eligible or may be denied service when eligible. The San Diego WIA area has reported that some legal residents have been denied services because of this confusion. One of the goals of the WIA is to provide integrated service. It will be difficult to meet this goal if disparate, obsolete documents are being applied to determine eligibility. Staff of both local JS and WIA programs must use the same list of documents to determine program eligibility.

If CCR, title 22, section 2051-3, is amended, it will clarify to Department staff what employment verification documents are acceptable and help avoid providing or denying services inappropriately. It would also improve coordination between the Department and its One-Stop Career Center partners.

Authority and Reference:

Authority: Sections 305 and 306, Unemployment Insurance Code.

Reference: Sections 9601.5 and 9601.7, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: None

Anticipated costs or savings to any State Agency: None

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs are shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states because this regulation makes only technical, non-substantive or clarifying changes to

current regulations. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The costs impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Anticipated impact on housing costs: These proposed amendments will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies:
None

Small Business Impact:

The Department has determined the proposed amendments will have no impact on small businesses, as the proposed amendments will not impose any new mandates, requirements or cost from the enforcement of this regulation on small businesses.

Local Mandate Determination:

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

Consideration of Alternatives:

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory amendments.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). E-mail comments should include true name and mailing address of the commentor. **Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than August 2, 2004, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

(Mailing address) Laura Colozzi, Legal Analyst
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Laura Colozzi, Legal Analyst
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800 Capitol Mall, Room 5020
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-7712
Fax No.: (916) 654-9069
E-Mail Address: eddlegal@edd.ca.gov

Note: In the event Laura is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers, Legal Analyst
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed to:

Name: Dana Flanagan-McBeth, Staff Counsel
Telephone No.: (916) 654-8410

Internet Website Access

The Department has posted on its Internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed EDD Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on August 2, 2004.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulatory amendments discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the amendments; and the information upon which the Department relied in proposing the amendments. (If you received this notice by mail, a copy of the text of the proposed amendments and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed amendments are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.
